IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.12453 of 2006
Date of Decision: 11.10.2007

Ajmer Singh and another .....Petitioners

Vs.

Union Territory, Chandigarh and another ...Respondents

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CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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Present : Mr.Pritam Saini, Advocate for the petitioners.
Mr.K.K. Gupta, Advocate for the respondents.

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RAJIVE BHALLA, J

Prayer in this petition is for the issuance of a writ, order or direction in the nature of Certiorari, quashing the notifications dated 27.1.2004 and 13.12.2004 issued under Sections 4 and 6 respectively under the Land Acquisition Act (hereinafter referred to as `the Act') as also notification issued under Section 9 of the Act and the award dated 10.8.2006.

The Union Territory of Chandigarh, issued a notification under Section 4 of the Act, dated 27.1.2004, proposing to acquire land in Village Raipur Kalan for setting up of an Industrial Area and other allied uses for the 3rd Phase near Mauli Jagran, situated in Khasra No.82 measuring 0.5 marlas.

The petitioner filed objections under Section 5-A of the Act, praying therein that the land proposed to be acquired had been reserved as a `Bara' No.82 during consolidation proceedings and the petitioners had,

constructed three rooms, one bath room and a verandah. It is also asserted that during consolidation 4 `Baras' , bearing Nos.79,80,81 and 82, including the petitioners `Bara' were carved out. However, the other adjacent `Baras',namely; Nos.79 to 81 had not been acquired. After consideration of the aforementioned objections, the Chandigarh Administration issued a declaration under Section 6, of the Act, dated 13.12.2004. The petitioners, thereafter, filed a representation before the Advisor to the Union Territory, Chandigarh, praying for release of their land from acquisition. However, a notice, under Section 9 of the Act, was served upon the petitioners, requiring them to appear before the Land Acquisition Collector on 4.2.2005. The petitioners submitted detailed objections, Annexure P-11 dated 4.2.2005 but no avail. They received a notice dated 3.8.2006, informing them that the award would be announced on 10.8.2006 compelling them to file the present writ petition.

Counsel for the petitioners, assails the proceedings for acquisition, by asserting that Khasra No.82 is a `Bara' reserved during consolidation. The petitioners have constructed a house and are residing therein. `Baras' in Khasra Nos.79,80 and 81, which adjoin the petitioners` Bara' have not been acquired. In addition, it is asserted that the respondents have left out agricultural land measuring 9 Kanals 17 Marlas. It is contended that a perusal of the site plan Annexure P-14 shows the exact location of the `Baras' and the released land and fortifies the above contentions. It is submitted that the assertion of the respondents, in their reply to the writ petition that Khasra No.82 is reflected in the revenue record as agricultural land is incorrect. It is submitted that the petitioners never exchanged the acquired land with any other land more

particularly the land referred to in the reply, namely Khasra No.14//3/1/2. It is asserted that the respondents have failed to substantiate the averment in the reply, that pursuant to an order passed by the Assistant Collector on 3.3.1965, the petitioners exchanged Khasra No.82 with Khasra No.14//3/1/2. The petitioners attempts to locate the aforementioned order, from the office of the Assistant Collector has been unsuccessful. It is further submitted that the Jamabandi Annexures P-19 describes the `Bara' in dispute as `Banjar Jadid' and not agricultural land. It is further contended that as the land was reserved for a `Bara', namely; for use by the petitioners, there was no requirement to obtain permission, under the Punjab New Capital( Periphery) Control Act, 1952 (hereinafter referred to as the `Periphery Control Act') for raising construction.

Counsel for the respondents, on the other hand, submits that as the award has been pronounced, the present petition be dismissed. The notification under Section 6 of the Act was issued on 13.12.2004, whereas the writ petition was filed on 10.8.2006. If the petitioners assertion that their land is a `Bara' is accepted, it can only be used for tethering of cattle, for storage of fodder etc. and not for residential purposes. It is further submitted that during consolidation, Khasra no.82 was declared as a `Bara' and Khasra No.14//3/1/2 as agricultural land. On account of a dispute between the petitioners forefathers and one Surinder Pal Singh, Khasra No.82 was exchanged with Khasra No.14//3/1/2 by an order passed by the Assistant Collector dated 3.3.1965. Khasra No.82 was ordered to be treated as agricultural land whereas Khasra No.14//3/1/2 was ordered to be treated as a `Bara'. A mutation was accordingly sanctioned to reflect the aforementioned order. It is, thus, asserted that as the land in dispute is

agricultural land and the construction raised by the petitioners, namely three temporary dilapidated rooms, being in violation of the Periphery Control Act, no allowance can be granted for this illegal construction. It is further contended that as the acquired land is essential for the 3rd Phase of the Industrial Area, the land cannot be exempted.

In response to the allegations of discrimination, it is contended that Khasra Nos.79,80 and 81 were not approved for acquisition, as they were `Baras'. The petitioners land being agricultural, the plea of discrimination is not tenable.

We have heard learned counsel for the parties and perused the paper book.

The impugned proceedings for acquisition seek to acquire 0.5 marlas of land in Khasra No.82 situated in Village Raipur Kalan, for the setting up of an Industrial Area and other allied uses for the 3rd Phase near Mauli Jagran. The petitioners assertion that the land in dispute is a `Bara' and as adajacent `Baras' in Khasra Nos.79,80 and 81 have not been acquired, their `Bara should not be acquired, does not merit acceptance. As averred in the reply, the petitioners forefathers arrived at an agreement, while settling a dispute with one Surinder Pal, that Khasra No.82 be treated as agricultural land and Khasra No.14//3/1/2 be treated as a `Bara'. This settlement was recorded by the Assistant Collector in his order dated 3.3.1965. As the petitioners denied the existence of any such order, we directed counsel for the Union Territory, Chandigarh, to produce the original record. The original record, namely, the mutation register of Village Raipur Kalan has been produced before us. It bears entry No.80 dated 1.5.1965 that supports the respondents assertions as to the nature of the

land. The Jamabandi Annexure P-19 discloses the nature of the land. The column that refers to the `kind of land', describes the land as `Banjar Jadid'. The word `Banjar Jadid' is a revenue term used to describe "agricultural land", which has remained fallow for four harvests. Thus, land described as `Banjar Jadid', though not under cultivation, is agricultural land that has remained fallow for four harvests, preceding the date under reference. An entry in a jamabandi describing land as `Banjar Jadid' would necessarily raise an inference that the land was used for agriculture. On the other hand a `Bara' is reserved for tethering of cattle and for storage of fodder etc. Thus, even as per the revenue record, the petitioners land is not a `Bara and the exclusion from acquisition of other adjoining `Baras', namely; 79,80 and 81 would not suffer from the vice of discrimination, the nature of two sets of lands being different.

As regards the assertion that agricultural land has been released or left out, suffice it to say that the notification under Section 4 sought to acquire 0.5 marlas of land and, therefore, no land was exempted or released from acquisition. The fact that the respondents did not acquire other land, cannot be pleaded as a ground to impugn the proceedings for acquisition.

It would also be necessary to notice here that the notifications under Sections 4 and 6 of the Act were issued on 27.1.2004 and 13.12.2004 respectively and the award was pronounced on 10.8.2006. No explanation cogent or otherwise is forthcoming for this inordinate delay in approaching this Court apart from an assertion that the petitioners were promised that their land would be released.

In view of what has been stated herein above, we are of the considered opinion that the impugned acquisition, does not suffer from any

error of law that would merit interference. Consequently, the present writ petition is dismissed with no order as to costs.

However, as there appears to be a residential unit over the land in dispute, the petitioners may approach the authorities for grant of appropriate time to vacate the premises. In case, the petitioners file such an application, the same shall be considered sympathetically and in accordance with law. No other point has been urged or raised.

(RAJIVE BHALLA)
JUDGE

11.10.2007 (UMA NATH SINGH)
GS JUDGE